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IN THE

Supreme Court of the United States

Term, A. D. 1959

No. 826

Wyngenroth and Jureczki Cases, As Designated
By Court Of Criminal Appeals Of Texas

PAUL WENGENROTH AND EMIL JURECZKI
PETITIONERS,

versus

THE STATE OF TEXAS,
RESPONDENT.

MOTION TO FILE AND PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS, AND OR PETITION FOR WRIT OF NOBIS CORAM, IN THE ALTERNATIVE, SAID BENCH OF SAID COURT OF CRIMINAL APPEALS BEING LOCATED AT AUSTIN, TEXAS

Submitted by

FLOYD DUKE JAMES,
Majestic Bldg.,
San Antonio, Texas,
Attorney for Petitioners

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TO THE HONORABLE JUSTICES
OF THE SUPREME COURT:

Now come Paul Wengenroth and Emil Jureczki, citizens of the United States, and residents of Bexar County, Texas, at San Antonio, Bexar County, Texas, complaining of the State of Texas, on account of the arrest, trial, procedure and disposition of four certain cases, as herein set out,

involving the game laws of the State of Texas, as alleged, the State of Texas being the respondent herein, and said petitioners herein petition and apply to the court to file herein for said writ of certiorari etc., and for other said reliefs, and indicated as follows:

1. The said Paul Wengenroth and Emil Jureczki say that said alleged payments of said alleged fines in each of the four cases to be set out herein were paid to the sheriff of the said county by an agent of said defendants to avoid jail, and no confession of guilt was involved, whereas, the State of Texas, on a suit or demand, might be held liable to return said payments, as original receipt, by said sheriff, and not said court, is held, and it is cited that said matters are not moot.

2. STATEMENT OF MATTERS INVOLVED, AND MOTION TO CONSOLIDATE FOUR CASES HEREIN.

(a) Motion is herein made by said Paul Wengenroth and Emil Jureczki, to consolidate four cases in the court below, and consider them as one case herein, as all of said cases were considered throughout as one matter in the courts below, and disposed of together.

(b) The said four cases are indicated as follows:

1. The State of Texas versus Paul Wengenroth, Case No. 9375, in J. P. Court, 1355 in County Court, No Hunting License, arrested by State Game Warden, 11/9/58, and jailed; 11/10/58, fine assessed at $25.00 and costs, being a total of $42.50, and remanded to jail on account of non-payment of fine, in Justice Court, No. 1, Kendall Co., Texas; Art. 904, Penal Code of Texas.

2. The State of Texas versus Paul Wengenroth, Case No. 9376, in J. P. Court, 1356 in County Court, Trespass, arrested by State Game Warden, 11/9/58, and jailed;

11/10/58, fine assessed at $200.00 and costs, being remanded to jail on account of non-payment of fine and costs, being a total of $219.50, in Justice Court, No. 1, Kendall Co., Texas; Art. 1377, Penal Code of Texas.

3. The State of Texas versus Emil Jureczki, Case No. 9377, in J. P. Court, 1357 in County Court, No Hunting License, arrested by State Game Warden, 11/9/58, and jailed; 11/10/58, fine assessed at $25.00 and costs, being a total of $42.50, and being remanded to jail on account of non-payment of fine, in Justice Court No. 1, Kendall Co., Texas; Art. 964, Penal Code of Texas.

4. The State of Texas versus Emil Jureczki, Case No. 9378, in J. P. Court, 1358 in County Court, Trespass, arrested by State Game Warden, 11/9/58, and jailed; 11/10/58, fine assessed at $100.00, and costs, being a total of $119.50, and being remanded to jail on account of non-payment of fine, in Justice Court No. 1, Kendall Co., Texas; Art. 1377, Penal Code of Texas.

3. Further Particulars of Cases.

The four cases, indicated above, originated in Justice Court, Precinct No. 1, Kendall County, Texas, located at Boerne, Kendall County, Texas, and the said defendants cite that they were arrested in said county by a game warden, on said alleged charges, while inspecting raw land of relative, near road and another tract, and were thrown in said jail of said county, without being taken to a magistrate, and were refused the use of a telephone to call a lawyer or any person, although the Texas laws forbid and punish said procedure as a criminal offense on the part of a jailor; that they were taken before said justice court on the following date of Nov. 10, 1958; that they did not plead guilty; that they were not sworn in as witnesses; that no

witness, sworn or unsworn, confronted them with any evidence of guilt or innocence; that they were remanded to jail, after being fined and told that they could then call on telephone; that they called their agent and friend; that said agent appeared, immediately after trials, and on same day, to sheriff at said jail, who had said tag and mark of fine on each said defendant, and paid said fine or amount of money, fines and costs, to free said defendants from jail because said agent was told by said justice that no appeal could be made, as said charges and cases involved the game laws; that later, after time for appeal, motion for new trial, etc., had expired, but time for said application for certiorari had not expired, said defendants employed a lawyer herein; that application for certiorari in County Court of Kendall Co., Texas, to Justice Court, No. 1, Kendall County, Texas, was duly made; that same was denied; that same was refused on motion for re-hearing; that the Court of Criminal Appeals of Texas, on date of Jan. 21, 1959, denied application for Certiorari, and refused application, in the alternative, to mandamus judge of the County Court of Kendall County, Texas, to order certiorari to the said justice of Kendall Co., Texas, to send up record and grant a new trial to each case herein.

4. Laws Used by the State of Texas to Prosecute.

The State of Texas, by the procedure of a game warden, as herein complained of, arrested said defendants on said date and threw them into the jail of Kendall County, Texas, without taking them to a magistrate, as nearly as may be, according to the Laws of the State of Texas, and after refusing said telephone calls to an attorney or others, and, in said justice court, on the next and following day, charged said defendants with the said cases and matters as indicated above, being No Hunting License and Trespass, Art. 904

and Art. 1377, Penal Code of Texas, although the laws and provisions of the State of Texas show, and will show that the deer hunting season of Kendall Co., Texas, was not then open, and was not open until one week later, on Nov. 16, 1958, and that the charge of No Hunting License in Kendall Co., was not then a good charge, but that if said defendants were hunting, said charges, if any, should have been Hunting Deer Out Of Season, or Unlawfully Hunting Deer, etc., and said matters of No Hunting License, should not have been included and compounded in the other said cases of Trespass, in which it appears that the owner of said adjoining tract of land joined up with the State in what should have been more properly a civil suit for damages, if said defendants had damaged his adjoining tract of land.

5. Laws and Defenses Cited by Defendants With Records and Petitions and Motions:

Defendants in court below applied, in due time, after time for motion for new trial in said justice court, and time for ordinary appeal had expired, to County Court, Kendall County, Texas, for writ of certiorari, with motions for new trial, as by Texas Laws, and as allowed by the Common Law, in such cases, and, under oath and hand and seal, duly filed in said County Court, said defendants applied and pleaded as follows:

(a) That the petitioners did not plead guilty as charged.

(b) That they should not be required to pay such fines and costs as therein charged, and that same should be set aside.

(c) That petitioners were not given due process of law of the land in said justice court.

(d) That they were not allowed to phone and thereby secure legal aid for said trials.

(e) That they had no legal counsel at trial.

(f) That they were not taken before a magistrate, as nearly as may be, after the said arrest, and as by due process of the Laws of Texas, but the next day thereafter.

(g) That they were not confronted by the evidence, if any, and the witnesses against them, either on oath or not on oath, contrary to the Bill of Rights of Texas, and their fundamental rights as citizens of the State of Texas and the United States.

(h) That said appearance should have been considered, under the Laws of Texas, as a preliminary hearing or arraignment, and not an appearance for trial and conviction on the merits.

(i) That, after said alleged hearings, and not before, said game warden, representing the State of Texas, said that he, then and at that time, would allow a telephone call, after said amounts of said fines and costs had been assessed, after which, in default of said payments, said defendants were remanded to jail.

(j) That said defendants show that they not only failed to receive justice under due process of law, in line with their civil rights, but that their rights under the laws were not properly protected and observed, as guaranteed by the Bill of Rights of the State of Texas, and the United States as well.

(k) That said application was in all things timely and in accordance with Section 7, Certiorari, Rule 575 to Rule 591, Texas Rules of Civil Procedure, and Art. 941, Vernon's Civil Statutes of Texas, which are invoked, in absence of other remedy.

(l) That petitioners prayed for writ of certiorari to said Justice of the Peace Court, No. 1, Kendall County, Texas, and for citation, process, notice and orders concerning same and for such other and further proceedings as the law directs, including trial de novo.

6. FURTHER RESULTS IN CASES.

Petitioners cite that said application to County Court of Kendall County, Texas, a court of record, was denied, and later refused in said causes on motion for rehearing; that said causes were denied by the Court of Criminal Appeals, State of Texas, on Jan. 21, 1959, after said appellants, petitioners, defendants, movants and relators appealed to said court, and for reasons as stated therein, and being in substance as follows:

(a) Motion was made for leave to file, and for the record, all such matters, and as by hand and seal, which were certified and noted in the said court below, County Court of Kendall Co., Texas, concerning said petition, exceptions and application for said writ of certiorari, said matters of transcript being of record in said County Court of Kendall County, Texas, but not in said Justice of Peace Court, No. 1, Kendall County, Texas, which is not a court of record.

(b) The said Court of Criminal Appeals, State of Texas, being the court of last resort herein, for such matters, and having refused, without comment herein, said court is herein referred to, and with State of Texas, as respondent.

7. MATTERS AND LAWS INVOKED TO GIVE JURISDICTION.

Petitioners and movants cite that this court has a right of hearing said causes and has jurisdiction herein for the following causes and reasons:

(a) The State of Texas has failed and refused to act herein and adjudicate the disputed matters, and is the court of last resort for such matters in Texas.

(b) The cases and matters are not moot, because the said defendants admit no final trial, admit no res judicata, and plead that the said fines and costs were paid with belief that there was no appeal.

(c) The State of Texas did not give fair trials herein and allow a new trial, as guaranteed by law, and submit to same.

(d) Citation is made to Bill of Rights, Constitution of State of Texas; guarantee of fundamental rights by the United States and Bill of Rights; Common Law Certiorari, and Oyer and Terminer, none of which has been barred by the Laws of Texas; Section 7, Certiorari, Rule 575 to Rule 591, Texas Rules of Civil Procedure, and Art. 941, Vernon's Civil Statutes of Texas, Annotated, providing for certiorari and trial de novo.

8. Petition For Writ of Nobis Coram.

The said Justice of Peace Court, No. 1, Kendall Co., Texas, is not a court of record, but the evidence will show, if certiorari and new trial is given, that said justice admitted, after legal time for appeal in the regular manner, that he had confused said cases with other cases and had told agent of defendants that these defendants had been found with meat of a deer in their car, whereas, such was not true, as he then and there admitted, and that he had made a mistake, and that he would like to see these defendants get a new trial, and that nothing like this had ever happened before in his court, whereas, if said defendants were convicted on same, either secretly or otherwise, and, the State, knowing

of same, and not apprising these defendants of such matters, then, said trial was unlawful and unjust, for such reasons, if no more, and these defendants, in the alternative plead same, and petition the court for a writ of nobis coram herein, and cite the case of Alcorta versus State of Texas, in which the writ was given to the defendant and appellant, and for reasons similar to these cases, in which the prosecution and State knew of certain matters during trial, but failed, refused or refrained from apprising the defendant and record of such matters and evidence; and, as pleaded herein by the petitioners, it matters not whether such information concerning deer meat was true or false, same, if alleged to be true, should have been openly injected and submitted in the case, whereas, in this case, the same as the Alcorta case, evidence held by the State was not introduced or charged, and was withheld.

Wherefore, the petitioners, movants, relators, applicants, and appellants appeal for relief herein, and for writ of certiorari, and/or in the alternative, for writ of nobis coram, and the petitioners will ever pray for relief herein, either in law or in equity, and for general relief or special relief, and for all things to which they may be herein entitled, under the Laws of Texas, the Laws of the Common Law, and/or the United States, and for justice will ever pray herein.

FLOYD D. JAMES, *Attorney for Petitioners, Movants, Applicants, Relators and Appellants.*

CERTIFICATE OF SERVICE

I, Floyd Duke James, counsel for Petitioners, Movants, Applicants, Relators and Appellants, indicated in the foregoing instrument, hereby certify that, on the date of .....
....., 1959, I mailed a copy of the foregoing instrument to the Respondent, the State of Texas, Honorable Attorney General of the State of Texas, at Austin, Texas.

.....

FLOYD DUKE JAMES,
Majestic Bldg.,
San Antonio, Texas,
Counsel for Petitioners.

FILE COPY

Office Supreme Court, U.S.
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APR 9 1959
JAMES R. BROWNING, Clerk

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SUPPLEMENTAL BRIEF OF APPELLANTS

Submitted by

Floyd Dure James
Majestic Bldg.
San Antonio, Texas
Attorney for Petitioners

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SUPPLEMENTAL BRIEF OF APPELLANTS

TO THE HONORABLE JUSTICES
OF THE SUPREME COURT:

Now come Paul Wengenroth and Emil Jureczki in the said four indicated and entitled causes and herein present their supplemental brief, and as follows:

1. Appellants point to the transcript and show that consolidation of the said causes could be herein made, since the said four indicated cases in the courts below had the same words, instruments and pleadings, and if one set or copy could be used to represent all four cases, time, effort and expense could be saved, and if pages 2 to 16 represented all four cases, then the pages, 17 to 31, 32 to 46 and 47 to 61 could be withheld from the printer, if it is noted that the only bond, page 20-21, is different in amount, being $19.50 more than the three other bonds.

2. That part of transcript, pages 62 to 75, should be withheld from the printed transcript, if printed, as same is concerning matters filed with the U. S. Supreme Court by appellants, and also matters filed with the Court of Criminal Appeals of Texas, and these matters were placed in said transcript without orders of appellants and charged to them. It is noted that transcript of matters filed with said Court of Criminal Appeals is contained in transcript from that court, and filed herein.

3. Reference is made to affidavit of Justice of Peace, in court below, page 77 of transcript, and statements found in last four lines, stating that their constitutional rights were explained and they each pleaded guilty to the charges as shown by transcripts of docket attached hereto, because such statements are irregular, were entered without permission or knowledge of defense and appellants, and are not matters of confession, evidence or testimony; such a statement entered without authorization of appellants, and at their expense, should not be herein considered, because the defendants were not confronted with such witness or evidence, and had no opportunity to cross-examine and defend. The entire record shows that the Justice Court was not a court of record, that new trial was refused in said County Court, and there is no statement of facts.

4. Referring to transcript, the record concerning bonds for certiorari to justice court, pages 5-6, 20-21, 35-36, and 50-51 show that judge of County Court of Kendall County, Texas, failed to approve said bonds, although same were filed and approved by the sheriff of Bexar County, Texas, at San Antonio, Texas, residence of defendants.

5. The transcript fails to show an appeal bond or recognizance, on date of January 19, 1959, the date of said final order, when motion for rehearing was overruled, and notice of appeal was given, because said judge, on said date, would not take either an appeal bond or recognizance, saying that he did not think it would be needed, whereas, said cases being misdemeanor cases, and said term of court ending on February 2nd, 1959, on or about, the appellants were forced to immediately appeal to the Court of Criminal Appeals of Texas, as shown by the record, and said court, refusing relief, and denying application for certiorari and/or mandamus, on date of January 21, 1959, appellants were forced to apply to the U. S. Supreme Court. It is noted that if no appeal bond, on a misdemeanor case, is perfected and filed during the term of the County Court of Kendall County, as in these cases, the Court of Criminal Appeals cannot acquire jurisdiction on appeal. Note Vernon's Code of Criminal Procedure, Vol. 1, Art. 53, Court of Criminal Appeals, and also Art. 53a, Mandamus, certiorari, and Contempt, in which it is shown that said court had the power and authority to grant the relief which was applied for in these cases, and as indicated in transcript of said Court of Criminal Appeals. Note Vernon's Texas Code of Criminal Procedure, Vol. 3, Title 10, Art. 830, Bail Pending Misdemeanor Appeal.

Wherefore, the said appellants present their supplemental brief herein, and respectfully apply for the consideration of the court, and for justice will ever pray herein.

FLOYD DUKE JAMES,
Attorney for Appellants.

CERTIFICATE OF SERVICE

I, Floyd Duke James, counsel for Appellants, hereby certify that on date of ..... , 1959, I mailed a copy of the foregoing instrument to Respondent, the State of Texas, Honorable Attorney General of the State of Texas, at Austin, Texas.

FLOYD DUKE JAMES,
Majestic Bldg.,
San Antonio, Texas,
Counsel for Appellants.